administration—that of course is superseded; but the laws which regulate the private relations of individuals to each other are not abrogated. This rule is, however, only the result of equitable considerations which would induce a civilised State in the position of conqueror to respect such laws, and does not depend on any inherent validity in the laws themselves[5].

Following the same principle, whatever property belonged to the Government of the conquered State, becomes also the property of the conquering[6].

Having disposed of these general considerations, I shall proceed to offer some remarks which may be useful on Government property under the several heads under which it is most usually found. These are—

(1) Estates which are acquired or held by succession to the rights of former Governments.
(2) Lands occupied by roads, canals, river-beds, railways, &c.
(3) Waste lands.
(4) Lands acquired for public purposes, under which head I shall briefly describe the legal procedure by which they are acquired.

Section I.—Property held in virtue of ancient State rights.

§ 1.—*Escheat.*

This head needs only a very brief notice. The Government becomes entitled to property to which there is no claimant owing to a failure of heirs. This was one of the ancient State rights in the

[5] See Broom's Constitutional Law (edition of 1866), page 21, and the case of *Campbell* vs. *Hall* (State Trials, XX, page 322). The new Government has *power* to alter any such law or custom; and, as a matter of fact in India, has sometimes done so, when the law or custom abrogated was opposed to sound policy or to natural justice; as, for example, when our Government abolished the practice of "satti" or burning of widows on the funeral pile of the husband, or when it has refused to recognise the law that a person changing his religion loses his rights to property or to inheritance as a consequence (Act XXI of 1850).

[6] Dana's Wheaton's International Law (8th edition), note to pages 334—335.

Hindu Ráj. Such property is now commonly called "nazúl[7]." In practice, the term "nazúl" is even more widely applied. Building sites, for example, in civil stations or encamping grounds, are often spoken of as "nazúl," when, in reality, they are Government property, not by any lapse or escheat, but because they are parts of a plot of waste or uncultivated land set aside by Government for the site of a station, or set aside for the encampment of troops on the march.

This extension of the term is due merely to the fact that the income of certain properties is credited to a particular fund, such as the "nazúl fund" of former days, and now to the funds made over to Municipalities. Nazúl property is then any Government property, the income of which goes to a particular fund and not to the general revenues.

§ 2.—*Forfeiture.*

Again, Government may become entitled to property forfeited for crime. Forfeiture is awardable by law in some cases; and in such cases in India, not only property in possession of the convicted person is forfeited, but during the whole term of his punishment

[7] See Regulation XIX of 1810 (preamble), which, however, assumes that escheats belong to Government and does not say so; only providing that nazúl property shall be considered in a certain way. This Regulation applies to the Lower Provinces (Bengal) and to the North-West Provinces. It is not in force in the Panjáb, Oudh, or Central Provinces; nevertheless, houses, gardens, and lands do occasionally lapse to Government by escheat in these provinces, so that the matter must be regarded as one of general law or principle which has been specially recognised as existing by the Regulations in Bengal. See also 16 and 17 Vic., Cap. 95, section 27; Act X of 1865, section 28, and several law cases, e.g. *The Collector of Masulipatam* versus *Cavally* 8 Moore's Ind. App., page 500; Bengal Law Reports, P. C., 87, &c. The case first alluded to puts the right on the general ground, that if there is no private owner for an estate, the State must take it for the public benefit. The right of the King to property left without heirs, or to ownerless property for which a proclamation has been for three years issued without effect, is mentioned in the Institutes of Manu (Chap. VIII, 30). See Elphinstone's History, (5th edition, 1866, page 23). The Hindu term for an escheat or for land whose owner has disappeared (gáyá, gone) is, I believe, "gáyári." The Muhammadan Government claimed the same right; hence the more recent term for it, of Arabic origin, has come to be the one commonly used.

(or as long as the sentence remains in force), any property he would otherwise acquire (as, *e.g.*, by inheritance) goes to Government[8]. During war (as after the Mutiny of 1857) estates may be forfeited from chiefs or others who took part against the State, rebelled, or otherwise offended against the Sovereign power. Such deprivations are acts of State beyond the cognisance of the ordinary law administered in times of peace; but they are spoken of as "forfeitures," especially in the case of petty estates or chiefships.

§ 3.—*Sale for arrears of Revenue.*

In some cases land has become the property of Government by having been put up to sale for arrears of revenue, and no one having bid, the land has been bought in for Government. This was especially the case in the early days of the Permanent Settlement of Bengal. At the present day such sales more rarely happen, and in many provinces the law permits the sale of land for arrears of revenue only in the last resort.

There are also, in various provinces, estates or lands to which at former settlements no one appeared to be entitled to be called proprietor; these practically became Government estates, and were managed (as it is called) "khás."

§ 4.—*Property of former rulers.*

In some places there are also houses and lands which have become Government property, because they were the property of the former Native Government[9]. In the same way some tracts of land, which are now under the Forest Act, may have been acquired.

In the old days, Native rulers used often to set aside considerable areas of land as "Shikárgáh" or hunting grounds, and these would be usually covered with thick, and perhaps valuable, forest. Such lands have now become the property of Government, following the principle of succession which I have indicated.

[8] Indian Penal Code, section 61.

[9] In such cases also the term nazúl is commonly applied.

§ 5.—*"Royal" trees.*

In the same way *teak* trees in Burma are the property of Government, and so is *sandal wood* in Southern India[10]. I believe that black-wood and some other kinds were considered royal trees in the Bombay presidency. It is questionable how far the Himalayan cedar (*Cedrus deodara*) comes under the same category in the districts where it grows.

There are many instances in the Panjáb (and, perhaps, in other provinces) where Government claims standing trees of other kinds, but this may be owing to the action of officers at our early settlement. The whole waste area might have been considered as Government property (on grounds we shall presently notice); but it was thought that the surrounding villages had some equitable claim, or it was necessary for their welfare to leave the waste open to their use and so the waste was not reserved, but only *the trees on it.*

§ 6.—*Land acquired by alluvion.*

There may be another way in which Government becomes possessed of land, and that is by river action.

In many parts of India the rivers are of great size: they have no banks, throughout their course, as in Europe. The fact is that the great Himalayan rivers are discharged on to the soft alluvial soil of the Gangetic plain, the Panjáb and other like countries; and the "river bed" really is only a broad ill-defined strip of country over which, during the season of snow-melting and summer rain (May to end of September), the full-fed torrent is accustomed

[10] There exist patents or sanads of the former rulers granting the right to all sandal trees to the East India Company in Mysore, &c. In Madras and elsewhere the monopoly of sandalwood *on private lands* has been more or less abandoned. But it is evident that the old Hindu princes claimed *all* sandalwood (see Buchanan's Journey through Mysore, Vol. II, 334). By treaties in 1766 and 1770, the East India Company obtained the right to purchase and export all sandalwood in Haidar Alí's dominions (Aitchison's Treaties V, 255). In 1790 Tipú Sultán issued orders for the preservation of sandal, and ordered a fine of Rs. 500 on any one who should cut it without permission. When sandal was taken from gardens and apparently from cultivated lands, it was customary to make some payment, not as acknowledging any right, but as a gratuity for having reared and protected the tree.

to spread; while during the rest of the year, a stream of water only meanders more or less sluggishly along the lines of lowest depression in the area. Lands fronting on this river bed or flooded area, are naturally liable to constant changes; the soil is cut away in one place and re-deposited in another, while islands are frequently thrown up in the river bed. Under certain circumstances, according to the particular law or custom of alluvion in force at the place, such islands may be the property of Government, and this proprietary right has been made use of in the Panjab to form some valuable fuel and timber plantations[1].

An island naturally formed, in a river, is held to be the property of Government, if the channel between it and the land was not fordable when the island appeared. This would not apply in cases where the island was formed on the proved site of some estate which had once existed, but had in the course of time been encroached on and covered by water, nor where, owing to the river dividing its stream, a portion of a known estate has become an island. If Government owns land on the river edge, land gradually washed up and forming an extension to it, would become part of the Government property[2], just as it would in the case of a private estate.

If a river deserted its bed, the land so left bare would belong to Government only on proof that the river bed had originally belonged to Government.

At the time I am writing this, the law on the subject is still to be found in Regulation XI of 1825, which, however, gives validity to any proved *local custom* on the subject, such custom prevailing against the principle otherwise laid down by the Regulation. This law will, it is hoped, be soon replaced by a more

[1] This was at an early date encouraged by Circular orders.—See Financial Commissioner's Circulars of 1863 and 1864.

[2] And this depends on whether the river which runs along the front of the estate is really in its natural bed, or is flowing over what was once another estate but has become submerged. For it was decided in a well-known case in the Privy Council (*Madan Thákur* v. *Lopez*) that in such a case the newly-formed land was really the re-appearing of the former estate, and then the land would belong to the owner of that former estate.

systematic one, which will limit the force of custom, when the custom is unsuited to the conditions of modern times. The principles above stated are, however, general, and will, I think, be found to conform as well to the new law as to the Regulation.

§ 7.—*Mineral Rights.*

The general right of Government to minerals—which term includes not only mines but all products below the surface—has been the subject of much discussion. The question has, however, been settled by a despatch from the Secretary of State[3].

In England, by the Common Law, all proprietors of land own (as we have seen) everything up to the sky and down to the centre of the earth, except gold and silver mines, which, by prerogative, belong to the Crown. But in a ceded and conquered country like India, this English Common Law and Crown prerogative does not apply, at any rate beyond the limits of the Presidency towns.

It is also a principle, as we have seen, that under existing rules of international law, conquest does not operate to alter private property in land. If, therefore, it could be shown that under any form of landholding in India, there was such a recognised property as naturally included mineral rights, then such rights would belong to the estate. But such a right it is difficult to make out. In the first place, as most mineral deposits exist in hill ranges and other places which are waste and unoccupied, they will remain vested in the proprietor of the waste, and that waste is the property, in the absence of definite grant or other specific claim, of the State. But in occupied lands, the matter is not clear. We have to consider what proprietary right really was, if any existed under the Native law, and what the effect of modern settlements and recognitions of right in land has been[4].

[3] No 35, dated 25th March 1880.

[4] In Madras, it has been held that raiyats have a full property in the land, and that, therefore, mineral rights vest in them. This, however, seems far from clear as regards raiyatwári holdings, and cannot be regarded as settled till we have a judicial decision on the point. The State has certainly taken a royalty even in the strongly-owned "janmi" lands of Malabar.

Under the Native law, the right to minerals seems not to have been definitely settled. Under Hindú law, Manu's Institutes lay down the rule, that half the produce of mines belongs to the king: and the Muhammadan law (Hidáya I, Chap. V) appears to recognise the right of the soil-owner, but the State may impose a tax on the mineral produce. Notwithstanding this, the whole subject of property in land under the Native system was so little defined, that it was necessary for the British Government to confer such rights. It is true that in some cases the right is recognised in general terms, so that it is still open to argue that certain rights do or do not form part of the proprietary right recognised. But the English Common Law principle not being in force in India cannot be invoked, as a matter of course, to show that every one, who has a property in the soil, necessarily has mineral rights also. Hence the following general conclusions gathered from the despatch of the Government of India in 1879, and approved (with the modifications introduced into the text) by the Home Government in 1880, may be stated with confidence :—

(1) In permanently-settled estates in Bengal, Madras, Oudh and elsewhere, the right of the zamíndár to minerals is admitted; because even if it were open to question (and opinion is not quite unanimous on this point) it would be impolitic to question it.

(2) In non-permanently-settled estates (raiyatwár lands, village estates and other), where there is no specific provision of the legislature, there is no general rule as to mineral rights. Even in different parts of the same province, the law and facts in the matter may be different. When the question arises in each province, it will have to be answered for that province only, in accordance with the practice of Government, and with judicial (or other) precedent. But the Secretary of State has added that, as a general rule, unless there is any distinct judicial precedent, or proof of established law or practice, the

mineral rights should be presumed to belong to the State[5].

In connection with this, it may be stated that in the newer provinces it has been found possible specifically to settle the point. Thus the right of the State to minerals (to a greater or less extent, the precise words of the law must be referred to) has been declared by law in Bombay[6], the Panjáb[7], Ajmer[8], Central Provinces[9], and British Burma[10]; there seems also, to be no doubt about it in Assam, and it will be probably there declared in the proposed land and revenue Regulation.

In the North-Western Provinces, the matter will have to be settled on the principle stated, and I believe it is intended at revised settlements to introduce clauses in the records, which will settle the point at least as regards new mines. In the alluvial plains, the matter has very little importance, and the only mineral deposits of consequence are in Kumaon, where reservations in grants of waste land probably do all that is required.

(3) In waste lands, the right to minerals remains with the Government, and it is held that grants in waste which do not specifically include mineral rights, do not avail to pass such rights, except in the case of those absolute grants spoken of as "fee simple" grants. In all modern leases and in modern revisions of the rules, as, for example, in Coorg, Assam, Kumaon, and other parts, a reservation of the Government right to minerals is specifically made.

[5] This seems to be the reasonable conclusion. There may be some general right in land, but we know that it was legally very ill-defined under Native systems. Our Government has desired to concede to the landholders whatever they are equitably entitled to, but it is obvious that Government is the natural owner of all residuary rights that are not shown to vest in the holder of private lands.

[6] Act (B) V of 1879, section 69.

[7] Act XXXIII of 1871, section 29.

[8] Regulation II of 1877, section 3.

[9] Act XVIII of 1881, section 151.

[10] Act II of 1876, section 8.